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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,007	03/26/2004	Fatih M. Ozluturk	1-2-0103.7US	7271
24374 7590 01/22/2009 VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER MOUTAOUAKIL, MOUNIR	
			ART UNIT 2419	PAPER NUMBER
			MAIL DATE 01/22/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,007	<b>Applicant(s)</b> OZLUTURK, FATIH M.	
	<b>Examiner</b> MOUNIR MOUTAOUAKIL	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed 11-12-2008 has been entered and considered.

Claims 28-29 are pending in this application.

Claims 28-29 are rejected as discussed below.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 28-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added subject matter which is not described in the original disclosure is as follow: "at least one of the communication channels carries time multiplexed signaling information and power control information".

### ***Claim Rejections - 35 USC § 103***

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamalainen et al (US 6,072,787) in view of Zehavi et al (US 5,892,774). Hereinafter referred to as Hamalainen and Zehavi.

Regarding claims 28-29. Hamalainen discloses a method of supporting plurality of communication rates. The method comprises and antenna (fig.7. mobile station must have an antenna), a circuit coupled to the antenna ( it is inherent that a circuit must be connected to the antenna to process incoming and outgoing intelligence), the circuit being configured to establish an initial communication link with a base station (col.6, lines 60-62, the MS sends and initial call set-up) the circuit being configured to determine a data rate required to support a first communication at time intervals (see col.5, lines 44-47. The MS is configured indicate the transfer data rate), wherein, in response to determining the data rate required to support the first communication (see col.5, lines 44-47. The MS is configured indicate the transfer data rate), a sufficient number of communication channels for transmission at the data rate are allocated (col.5, lines 44-67); the circuit being further configured to reallocate the communication channels should be required a data rate change (col.6, lines 18-32).

Hamalainen discloses all the limitations of the claimed invention, including using control channels, signaling between the base station and the mobile device, with the exception of multiplexing signaling information and power control information. However, Zehavi, from the same field of endeavor, discloses a method of multiplexing signaling messages and power control commands (col.1, lines 60-67) for the purpose of adjusting transmission power and save resources at the same time. Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention implement the method of multiplexing power control and signaling messages, as taught by Zehavi, into the communication method of Hamalainen for at least the reason stated above.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 28-29 have been fully considered but they are not persuasive.
6. Applicant's representative argues that the 35 USC 112, first paragraph, for failing to comply with the written description requirement is inappropriate. Applicant's representative claims that support for the phrase "at least one of the communication channels carries time multiplexed signaling information and power control information" can be found in paragraph [0050] of the patent specification.
7. Examiner respectfully disagrees. The indicated paragraph [0050] is as follow:  
  
[0050] Logical communication channels are divided into two groups: 1) global channels; and 2) assigned channels. The global channel group includes channels which are either transmitted from the RCS 104 to all subscriber units 111-118 or from any subscriber unit 111-118 to the RCS 104 regardless of the identity of the subscriber unit 111-118. Channels in the assigned channels group are those channels dedicated to communication between the RCS 104 and a particular subscriber unit 111.

As it can be seen above there is no indication or support for “at least one of the communication channels carries time multiplexed signaling information and power control information”. Therefore, the 35 USC 112, first paragraph, is appropriate.

8. Applicant's representative argues that the prior art of record, Hamalainen in view of Zehavi, fails to teach a subscriber unit that makes a determination of a data rate required to support a first communication and also allocates a sufficient number of communication channels for transmission of the first communication without any signaling from the communication network.

9. Examiner respectfully disagrees. Hamalainen discloses a high-speed data transmission in a digital mobile communication system. Hamalainen discloses that the mobile station, subscriber unit, is capable of determining the minimum and maximum data rate of the communication channel, wherein the channel, specified by the minimum/maximum rates, formed can be one or more channels (see at least col.5, lines 44-47 and lines 65-66). Moreover, the claims language is silent with respect to determining the data rate **without any signaling from the communication network**. Therefore, the limitations of the claimed invention are believed to be satisfied by the prior art.

10. Claims should be interpreted in light of the specification disclosure, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Additionally, Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'." 710 F.2d at 802, 218 USPQ at 292 (quoting *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)). Moreover, claims are interpreted in light of the specification does not mean that everything in the specification must be read into the claims." *Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 957, 220 USPQ 592, 597 (Fed. Cir. 1983), cert. denied, 469 U.S. 835 (1984).

### ***Conclusion***

11. This is a continuation of applicant's earlier Application No. 10/810007. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

When responding to this office action, applicants are advised to clearly point out the patentable novelty which they think the claims present in view of the state of the art disclosed by the references cited or the objections made. Applicants must also show how the amendments avoid such references or objections. See 37C.F.R 1.111(c). In addition, applicants are advised to provide the examiner with the line numbers and pages numbers in the application and/or references cited to assist examiner in locating the appropriate paragraphs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOUNIR MOUTAOUAKIL whose telephone number is (571)270-1416. The examiner can normally be reached on Monday-Thursday (1pm-4:30pm) eastern time.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. M./  
Examiner, Art Unit 2419

/Hassan Kizou/  
Supervisory Patent Examiner, Art Unit 2419